



# Guideline

## Income Tax Income taxation of nonresident aliens

Applies to 2003 tax year only

*Rick Clayburgh*  
*Tax Commissioner*

### Purpose of guideline

If you are a citizen of a country other than the United States and you meet the definition of a nonresident alien for United States income tax purposes, this guideline explains how to comply with North Dakota's income tax laws. If you work, carry on a trade or business, or own income-producing property in North Dakota, you may have to file a North Dakota income tax return and pay North Dakota income tax.

**Treaties between the U.S. and foreign countries.** Except where an income tax treaty between the United States and a foreign country specifically exempts income from taxation by the fifty U.S. states, North Dakota does not recognize the provisions of the treaty, and the treaty's provisions do not affect North Dakota's income tax laws. Therefore, even if income derived from North Dakota sources is exempted from U.S. income tax, it may be taxable by North Dakota.

### Who must file

You must file a North Dakota individual income tax return if you derive any amount of gross income from North Dakota sources. You have gross income from North Dakota sources if you received any of the following:

- Wage, salary, tip, commission, fee, and any other type of compensation for personal or professional services performed in North Dakota.
- Rent, oil royalty, gain, and any other type of income from tangible property located in North Dakota.
- Income from a business carried on in North Dakota. This includes income from a business that you operate as a sole proprietorship, and income passed through to you by a partnership, S corporation, or other pass-through entity that carries on its business in North Dakota.
- Income from gambling activity carried on in North Dakota.
- Any other income having its source in North Dakota.

Gross income from North Dakota sources does not include interest, dividends, pensions, annuities, or income or gain from intangible property. However, if interest, dividends, or income or gain from intangible property is received from a business carried on in North Dakota, the income is included in gross income from a North Dakota source if it is properly allocated and apportioned to North Dakota by the business.

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## Who must pay North Dakota income tax?

You will have to pay North Dakota income tax if you have to file a North Dakota income tax return and your total gross income from North Dakota sources is more than allowable deductions and credits. For this purpose, allowable deductions do not include any deduction or exemption provided for under a treaty between the U.S. and a foreign country if the treaty provisions do not specifically make it applicable to the fifty U.S. states.

## Which form to use

You may use either Form ND-1 (Main Method) or Form ND-2 (Optional Method). Please note that these two forms are governed by different tax law provisions and that the tax calculated on them will be different. The use of Form ND-1 is generally recommended because it yields a lower tax in most cases. The only sure way to know if the tax will be lower on Form ND-1 or Form ND-2 is to calculate the tax on both forms and compare them; you may file the form with the lower tax.

## Instructions for completing the North Dakota return

The instruction booklets for Form ND-1 and Form ND-2 do not explain how to complete the return in the case of a nonresident alien. Instead, you must complete the return using the special step-by-step instructions that follow.

***Important: The following instructions only apply to the 2003 North Dakota individual income tax return.***

### STEP 1

#### **Complete a 2003 U.S. income tax return**

In the case of a nonresident alien, some of the information needed to complete the North Dakota income tax return is taken from the U.S. income tax return. The proper U.S. income tax return to use is either Form 1040NR or Form 1040NR-EZ. Whether or not you actually file a U.S. income tax return for 2003, you must obtain and complete a separate 2003 U.S. Form 1040NR or 1040NR-EZ for North Dakota income tax purposes. Complete the U.S. return according to the instructions provided with it; however, except where an income tax treaty between the U.S. and your country specifically applies a treaty provision to the fifty states of the U.S., you must disregard any instruction to the U.S. income tax return that refers to the treaty. Write "Pro Forma Return For ND Purposes" at the top of the completed U.S. income tax return and attach it to the North Dakota income tax return.

### STEP 2

#### **Complete a 2003 North Dakota income tax return**

The instructions for completing the North Dakota income tax return depend on which form you choose to use—see **Which form to use** in this guideline. The references to Form 1040NR or Form 1040NR-EZ in these instructions refer to the form you completed in **STEP 1** above.

**If you choose to use Form ND-1, do the following:**

1. Complete the top portion of page 1 of Form ND-1 (through line D) as explained on page 8 of the Form ND-1 instruction booklet.
2. On line E, enter the amount from Form 1040NR, line 33 (or Form 1040NR-EZ, line 10).
3. On line 1, enter the amount from Form 1040NR, line 38 (or Form 1040NR-EZ, line 14).
4. Complete lines 2 through 14 as explained on page 9 of the Form ND-1 instruction booklet.
5. To calculate the amount of tax to enter on line 15, complete Schedule ND-1NR. Disregard the references to Form 1040, 1040A, and 1040EZ. Instead, enter the amounts from Form 1040NR or Form 1040NR-EZ on the applicable lines of Schedule ND-1NR, Column A. Enter scholarship and fellowship grant income or exclusion on line 8 or line 14, respectively, of Schedule ND-1NR, Column A. Then, complete Column B according to the instructions to Schedule ND-1NR.
6. Complete the remaining lines on Form ND-1 as instructed on the form or in the Form ND-1 instruction booklet.

**If you choose to use Form ND-2, do the following:**

1. Complete the top portion of page 1 of Form ND-2 (section above the Tax Computation Schedule) as explained on page 7 of the Form ND-2 instruction booklet.
2. Complete Part 2 of Schedule 3. Disregard the references to Form 1040, 1040A, and 1040EZ. Instead, enter the amounts from Form 1040NR or Form 1040NR-EZ on the applicable lines of Part 2, Column A. Enter scholarship and fellowship grant income or exclusion on line 8 or line 14, respectively, of Part 2, Column A. Then, complete Column B according to the instructions on page 11 of the Form ND-2 instruction booklet.
3. Complete Part 1 of Schedule 3. For lines 11, 17, 18, 20, 22, and 24, disregard the instructions on the form and in the Form ND-2 instruction booklet, and complete these lines as follows:

**Line 11** If you completed Form 1040NR, enter the total of the amounts, if any, from the following lines of that form:

- Line 50.
- **Plus** line 51.
- **Plus** line 53. However, only include the taxes on distributions.
- **Plus** Section 72(m)(5) excess benefits tax.
- **Plus** Form 4970 tax and recapture taxes included on line 56.
- **Minus** line 40.
- **Minus** line 60.

If you completed Form 1040NR-EZ, enter the amount from line 15 of that form.

**Important:** *The amount entered on this line is limited to the amount of U.S. income tax that you were actually liable to pay for the tax year.*

- Line 17** Enter the amount from Form 1040NR, Schedule A, line 17. If you used Form 1040NR-EZ, enter -0-.
- Line 18** Enter -0-.
- Line 20** Enter the amount from Form 1040NR, Schedule A, line 3. If you used Form 1040NR-EZ, enter -0-.
- Line 22** Enter -0-.
- Line 24** Enter the amount from Form 1040NR, line 37 (or from Form 1040NR-EZ, line 13.)
4. Complete the Tax Computation Schedule on page 1 of Form ND-2 as instructed on the form or in the Form ND-2 instruction booklet.

## When and where to file

The 2003 North Dakota individual income tax return (either Form ND-1 or Form ND-2) must be filed on or before April 15, 2004. However, if you are required to file a 2003 U.S. Form 1040NR with the Internal Revenue Service and it isn't due until June 15, 2004, you have until June 15, 2004, to file the North Dakota individual income tax return (without penalty or interest).

Use the preprinted envelope in the instruction booklet to mail your North Dakota income tax return. If you do not have an envelope, mail it to the following address:

Office of State Tax Commissioner  
600 E. Boulevard Ave., Dept. 127  
Bismarck, ND 58505-0550

## Need help?

Phone: (701)328-1032  
Speech/hearing impaired — call us through Relay North Dakota at 1-800-366-6888  
E-mail: [individualtax@state.nd.us](mailto:individualtax@state.nd.us)  
Web site: [www.ndtaxdepartment.com](http://www.ndtaxdepartment.com)  
Write: Office of State Tax Commissioner, 600 E. Blvd. Ave., Dept. 127, Bismarck, ND 58505-0599